



**CITY OF LODI  
COUNCIL COMMUNICATION**

**AGENDA TITLE:** Request Authorization for Joinder in Amicus Brief in Support of City of Irvine in the case of City of Irvine v. Southern California Association of Governments, California Court of Appeal, Fourth Appellate District, Division 3

**MEETING DATE:** January 7, 2009 City Council Meeting

**PREPARED BY:** City Attorney's Office

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**RECOMMENDED ACTION:** That the City Council authorize joining the Amicus Brief in the case of City of Irvine v. Southern California Association of Governments, California Court of Appeal, Fourth Appellate District, Division 3

**BACKGROUND INFORMATION:** Amicus Briefs are filed in various actions, which involves matters of wide-ranging concern to provide information and additional argument to the Court in order to assist the Court in understanding all of the issues and arrive at a conclusion.

In the Irvine case, the local Council of Governments assigned a fair housing percentage to Irvine under the Regional Housing Needs Assessment (RHNA) process, that, as this Council can sympathize from personal experience, Irvine's Council felt was disproportionate. Irvine challenged the assessment but the trial court concluded it had no jurisdiction to hear the challenge. Irvine seeks Lodi's support in its appeal to ensure that cities that dispute their RHNA Assessment can seek judicial review.

**FISCAL IMPACT:** None.

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D. Stephen Schwabauer, City Attorney

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APPROVED:

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Blair King, City Manager



DEC 15 2008

CITY MANAGER'S OFFICE

BETH KROM, Mayor

[www.ci.irvine.ca.us](http://www.ci.irvine.ca.us)

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December 9, 2008

City of Lodi  
P.O. Box 3006  
Lodi, CA 95241

Re: Request for Joinder in Amicus Brief in Support of City of Irvine  
*City of Irvine v. Southern California Association of Governments*  
California Court of Appeal, Fourth Appellate District, Division 3

Dear Honorable Mayor:

Irvine is seeking support from those cities that feel, as we do, that regardless of the merits of the underlying challenge to the RHNA process, cities deserve their day in court when a council of governments violates State law. Thank you in advance for taking the time to read and consider this letter, which deals with the extremely important subject of the ability of cities to have their "day in court" to protect and preserve local control over the content of their general plans and, more specifically, their housing elements.

By way of background, the City of Irvine ("Irvine") had filed a petition for writ of mandate in the Orange County Superior Court to challenge the adoption by the Southern California Association of Governments ("SCAG") final allocation plan under the regional housing needs assessment ("RHNA") for the current housing cycle. SCAG filed a motion asking the Orange County Superior Court to dismiss Irvine's lawsuit on the ground that courts have no jurisdiction to review and adjudicate the validity of determinations rendered by regional councils of government related to the RHNA process.

Acknowledging that there is no expressed statutory provision and that the decision on the jurisdictional issue was a difficult call, the Superior Court dismissed Irvine's lawsuit. In addition, the Superior Court expressed that there was "no doubt that this issue will be revisited by the appellate courts." Irvine has appealed the dismissal of its lawsuit, and the jurisdictional issue is currently before the California Court of Appeal for the Fourth Appellate District, Division 3. (As an aside, there also are two appeals on the identical issue pending before the Second Appellate District with regard to SCAG allocations that have been challenged by the Cities of La Mirada and Palmdale.)

Although the facts of Irvine's lawsuit are not relevant to our appeal, it is worth noting that SCAG allocated Irvine over 43% of the entire Orange County regional housing need, which hardly constitutes a "fair share" allocation. Irvine's lawsuit claims that this allocation constitutes an abuse of discretion and violates various State mandates and requirements in connection with the RHNA process. While we regret having to take this matter to the courts, it is the only jurisdiction of review that we have available to us. The State has ceded authority to SCAG and our appeal to SCAG and request for reallocation was denied.

While issues of RHNA allocation are debated by cities throughout the state, Irvine has a long history of embracing balanced development, including the provision of affordable housing. That said, what city could be expected to plan for almost a 50 percent increase in its housing stock, in Irvine's case 35,000 new housing units within one cycle?

When Irvine learned that SCAG was seeking support for its position on the jurisdictional issue from other regional councils of governments and/or the California Association of Councils of Governments, Irvine submitted a formal request to the Legal Advisory Committee of the League of California Cities for authorization of an amicus ("friend of the court") brief addressing the following: "The legal issue is **solely and simply** whether a court has jurisdiction to hear a mandamus challenge brought by a city or county against a council of governments for official action taken during the RHNA process."

The Legal Advocacy Committee considered the request and approved the preparation and filing of an *amicus* brief on behalf of the League. Despite this recommendation, on November 22, 2008, the California League of Cities Board voted to rescind the Legal Advocacy Committee's decision and instead remain neutral in the litigation. Individual cities are free to participate in amicus support if they wish to do so which is why I am writing and requesting such support. The disposition of our appeal has serious implications for all California cities. Currently, there is ~~no forum in the courts for a city to seek relief~~ in the event the RHNA process fails to comply with State-mandated requirements. If allowed to become the law of the State, the holding in the Irvine lawsuit could have disastrous consequences for all cities with regard to determinations made by regional councils of government. Furthermore, it could be used to establish precedent with respect to other obligations imposed on cities by Regional Councils and the state.

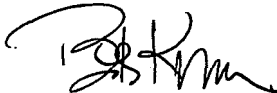
It is Irvine's view that SCAG's position flies in the face of traditional notions of the separation of powers and the right to judicial review. Checks and balances are a foundation of our democracy. Cities are charged with the responsibility to carry out its governmental activities in accordance with applicable laws and regulations, and to be held accountable in the courts if they fail to do so. While

SCAG asserted to the League's Board of Directors that a reduction in Irvine's allocation under the RHNA will result in a reallocation of residential units to other jurisdictions within SCAG, no case law supports this position. Irvine was keenly aware of this concern and specifically did not seek a reallocation of units to other jurisdictions when we filed our lawsuit.

What is before the Court of Appeal now is simply whether cities have a right to seek redress from an independent tribunal if a council of governments violates the RHNA process. That is, the merits of Irvine's challenge to the process are not being adjudicated. A published court decision that prohibits judicial review of decisions of councils of governments concerning RHNA allocations severely impacts local control over housing elements and local planning. Cities should also be concerned about other local planning authority. If cities are prevented from seeking judicial review of administrative procedures that apply to housing element law, councils of governments can be expected to extend that holding to other areas of regional planning (e.g., the Regional Transportation Plan) that ultimately affect city planning.

In closing, If your city has an interest in preserving the right of all cities to seek judicial review under such circumstances and support Irvine's position through no-cost participation in an amicus brief, please contact as soon as possible Bill Ihrke at Rutan & Tucker, LLP, lead counsel for the City of Irvine on this case, at [bihrke@rutan.com](mailto:bihrke@rutan.com) or 714-338-1863. If you would like to speak to me directly, please call me at (949) 724-6233.

Sincerely,

A handwritten signature in black ink, appearing to read "B Krom", with a stylized flourish at the end.

BETH KROM  
Mayor